UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/910,520	07/20/2001	Samuel Farchione	FSP-10002/08	2097

25006 7590 01/30/2008
GIFFORD, KRASS, SPRINKLE,ANDERSON & CITKOWSKI, P.C
PO BOX 7021
TROY, MI 48007-7021

EXAMINER	
MOSSER, KATHLEEN MICHELE	
ART UNIT	PAPER NUMBER
3714	

MAIL DATE	DELIVERY MODE
01/30/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/910,520	FARCHIONE, SAMUEL	
	Examiner	Art Unit	
	Kathleen Mosser	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 November 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14 and 16-43* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14 and 16-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

In response to the amendment filed 11/29/2007, claims 1-14 and 16-43 are pending.

Claim Rejections - 35 USC § 112

1. Claims 8-10, 24-26, and 41-43 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant's amendments to each of the independent claims requires that the input device be operable to capture an image, the specification fails to teach a colorimeter, spectrometer or computer that is capable of performing this operation.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. Claims 1-7, 10, 14, 16-17, 20, 22-23, 26-27, 32-34, 37, 39-40, and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Gourtou et al (US 5478238) in view of Nakamura et al (US 4987552). Gourtou teaches a method for selecting fashion information for an individual including: providing a style database including complimentary fashion information having cosmetic data and physical characteristics data; providing a personal characteristic database adapted to receive physical characteristic data for an individual (col. 7: 14-42); providing an input device operable to capture physical characteristics data about the individual (input means 24); capturing with the input device physical characteristic data of the individual (using the camera or entering information directly); receiving in the personal characteristic database physical characteristic data for at least two physical characteristics for an individual; comparing the physical characteristics data for the individual with the style database to identify complimentary fashion selections that are appropriate for the individual based upon the physical characteristic data received in the personal characteristic database and generating a data set that includes complimentary fashion selections that are appropriate for the individual based upon the physical characteristic data received in the personal characteristic database (col. 7:57-col. 8:25) including a printer (col. 8: 42-43) for outputting the results in a hardcopy format, as in claim 1 and substantially similar limitations in claims 16, 20, 22, 27, 32, 33, 37 and 39. The cosmetic data includes at least color (claim 5) as is shown as the foundation palette and described in at least col. 9: 24-51. The physical characteristics can include skin color, skin tone, hair color and/or eye color (claims 6, 17, and 34) as is shown in at least col. 7: 14-42. The input device including a digital camera (claims 7, 23, and 40) is shown in col. 6: 57. The input device including a computer (claims 10, 26, and 43) is shown in col. 5: 29-36.

Gourtou fails to teach that the database is accessible over a network (claim 14). However, the applicant has admitted that such is old an well-known in the art. It would have been obvious to one of ordinary skill in the art to include this feature into the Gourtou system so as to allow for a centralized database of all the information necessary to operate a plurality of the machines.

Gourtou et al fails to teach that the input means captures an image of the individual that includes at least two physical characteristics (incorporated into independent claims 1, 16, 27, and 33 through the amendment date 11/29/207). Nakamura teaches that photos may be used to determine other

characteristics of the user, see col. 3: 11-21. Further, Gourtou fails to teach the inclusion of instructional data, including a multimedia or video presentation (claims 2-4) . Nakamura shows this feature to be old in the style art. Nakamura discloses personalized cosmetics videos (col. 1, 30-36). Nakamura teaches that women request this information frequently (col. 1, 18-27). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention from the teaching of Nakamura to modify the style database of Gourtou by including the instructional data of Nakamura to provide information that women request frequently and to facilitate learning of the proper application of cosmetics to achieve the desired effects.

3. Claims 8, 9, 12, 13, 18, 19, 24, 25, 28-30, 35, 36, 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gourtou et al (US 5478238) in view of Nakamura (US 4987552) further in view of MacFarlane (US 5311293). Gourtou and Nakamura fail to teach the use of a colorimeter (claims 8, 24 and 41); a spectrophotometer (claims 9,25 and 42); that the database includes clothing information, including size data, style data, fabric color, or texture data (claims 12, 13, 18, 19, 28, 29, 35, 36). MacFarlane teaches the use of a colorimeter or spectrophotometer for inputting skin tone information into a computer system in at least col. 6:56-57. MacFarlane teaches using the system for fabric selections, including fabric color in at least col. 3: 66-col. 4: 22, col. 4: 35-45, and col. 17:11. It would have been obvious to one of ordinary skill in the art to include the features of MacFarlane into the invention of Gourtou to provide additional or alternative means for determining skin tone color and to provide the user of the system with a complete analysis of their skin tone so as to be able to coordinate clothing colors along with make-up choices.

4. Claims 11, 21, 31, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gourtou et al (US 5478238) in view of Nakamura (US 4987552) or Gourtou et al (US 5478238) in view of Nakamura (US 4987552) further in view of MacFarlane (US 5311293), in view of Thies et al (US 5,206,804). Gourtou and MacFarlane fail to explicitly teach that the style database further comprises footwear information. Thies shows this feature to be old in the style art. Thies discloses a database

containing footwear information (co/. 6, 66-68). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention from the teaching of Thies to modify the style database of Gourtou and MacFarlane to include the footwear of Thies to provide more fashion options for the user.

Response to Arguments

5. The previous rejection under 35 USC §101 is withdrawn in view of the amendments to the claim which amends the results of the claimed methods to include the generation of a physical document including the style information. The previous rejections based upon the combination of Macfarlane and Fabbri is withdrawn solely in view of the amendments to the claims reciting that an image is used capture the two physical characteristics of the user. The examiner maintains the previous arguments related to the issue of teaching away. Further comments regarding this issue are not mentioned herein as the rejections raising this issue is withdrawn for other reasons.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen Mosser whose telephone number is (571) 272-4435. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kathleen Mosser
Primary Examiner
Art Unit 3714

January 28, 2008